IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 50 of 2003 (M/B)

Ravindra Kumar S/o Satyaveer Singh,
R/o 402, Avas Vikas Colony,
Roorkee, District Haridwar. ..... Petitioner

Versus

1. State of Uttaranchal
through Collector Haridwar,

2. Assistant Labour Commissioner,
Haridwar.

3. Assistant Sub Divisional Magistrate,
Roorkee, District Haridwar.

..... Respondents

Mr. Arvind Vashishth, Advocate for the petitioner.
Mr. Subhash Upadhyaya, Standing Counsel for the respondents.

JUDGMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. Prafulla C. Pant, J.

RAJEEV GUPTA, C.J.(Oral)

Mr. Arvind Vashishth, Advocate for the petitioner.

Mr. Subhash Upadhyay, Standing Counsel for the respondents.

They are heard.

2) Petitioner Ravindra Kumar, Proprietor of Sangam Brick Field, has filed this writ petition for the following reliefs:

> "1. A writ order or direction in the nature of Certiorari quashing the order dated 19.12.02 passed by Assistant Labour Commissioner.
>
> 2. A writ order or direction in the nature of Mandamus commanding the Assistant Labour Commissioner to decide the case afresh after determination of the Age of alleged child labours.
>
> 3. A writ order or direction in the nature of Mandamus commanding the respondents not to proceed with the recovery of the compensation as ordered by Assistant Labour Commissioner on 19.12.02.

4. Any other writ order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

5. Award cost of the petition."

3) The petitioner is aggrieved of the impugned order dated 19.12.02 (Annexure No. 6) passed by Assistant Labour Commissioner, Devpura, Haridwar, whereby following the directions contained in the judgment of the Apex court in the case of **M.C. Mehta Vs. State of Tamil Nadu** reported in **A.I.R. 1997 S.C. 699,** the petitioner was directed to pay compensation of Rs. 20,000/- per child (a total sum of Rs. 80,000/- for four child labours found working at the brick kiln).

4) The matter relates to the employment of child labour by the petitioner in his brick kiln in violation of the provisions of the Child Labour (Prohibition and Regulation) Act, 1986.

5) Additional Sub Divisional Magistrate, Roorkee inspected the petitioner's brick kiln at 6:00 A.M. on 27th April, 2002 and found four child labours working in the petitioner's brick kiln. A notice to show cause was issued to the petitioner as to why he should not be directed to pay compensation of Rs. 20,000/- per child labour following the Apex Court's directions in the case of M.C. Mehta.

6) The petitioner, in his reply to the show cause notice, took several objections including the one that the Additional Sub Divisional Magistrate had no jurisdiction to inspect the petitioner's brick kiln.

7) The Assistant Labour Commissioner did not find any substance in the petitioner's objections and passed the impugned order.

8) Mr. Arvind Vashishth, the learned counsel for the petitioner has challenged the impugned order on the following grounds:

i) That Additional Sub Divisional Magistrate was not authorized under Section 17 of the Act to inspect the petitioner's brick kiln.

ii) That the petitioner cannot be directed to pay compensation without his trial and conviction under the provisions of the Act.

iii) That, infact, no child labour was found in the brick kiln.

iv) That the inspection by Additional Sub Divisional Magistrate at 6:00 A.M. was not during the working hours of the kiln.

9) All the Sub Divisional Magistrates in the State of Uttaranchal were declared as Inspectors under Section 17 of the Act by G.O. No. 1622/ Udyogic Vikas dated 23.07.2001. A bare perusal of the above G.O. makes it apparent that it has authorised all the Sub Divisional Magistrates. As such, we have no manner of doubt that all "Sub Divisional Magistrates" would include "Additional Sub Divisional Magistrates" also. We therefore, do not find any substance in the petitioner's objection that the above Government Order does not authorize Additional Sub Divisional Magistrates to act as Inspectors under Section 17 of the Act. The Assistant Labour Commissioner, therefore, has rightly rejected the petitioner's objection in that behalf.

10) As the direction to the petitioner to pay compensation is based on the directions of the Apex Court in the case of M.C. Mehta, the petitioner's submission that in the absence of petitioner's trial and conviction under the Act he cannot be directed to pay compensation, deserves outright rejection, as the direction to the employer to pay compensation following the decision of the Apex Court in the case of M.C. Mehta is in addtion to the employer's liability under the Act.

The petitioner's submission in that behalf is liable to be rejected and is hereby rejected.

11) So far as the petitioner's denial to the presence of four child labours at the brick kiln at the relevant time is concerned, we do not find any material to take a different view than the one taken by the Assistant Labour Commissioner, which was based on the material available including the inquiry report of the Additional Sub Divisional Magistrate, From the impugned order, we further gather that the process at the brick kiln used to commence at 6:00 A.M. Therefore, we do not find anything wrong in the inspection by the Additional Sub Divisional Magistrate at 6:00 A.M.

12) For the foregoing reasons, we do not find any substance in any of the submissions advanced on behalf of the petitioner.

13) The writ petition, therefore, is liable to be dismissed and is hereby dismissed summarily.

14) Consequently, the interim order dated 17.02.2003 stands vacated automatically.

(Prafulla C. Pant, J.) 08.06.2006

(Rajeev Gupta, C. J.) 08.06.2006

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